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Charles Darwin University

Final Examination

Family Name						
Given Name/s						
Student Number						
Teaching Period	Final Exam, Semester 2, 2018					

LAW512 – Commercial and Corporate Law for Managers	DURATION	
	Reading Time:	10 minutes
	Writing Time:	180 minutes
INSTRUCTIONS TO CANDIDATES		
<p>Total marks for this exam: 60 marks.</p> <p>Section A contains 2 short answer questions worth 30 marks.</p> <p>Section B contains 2 long answer questions worth 30 marks.</p> <p>Identify and discuss all relevant issues and refer to legislation and/or case law to justify answers to questions in both sections.</p>		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
Any calculator is permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
Any printed material with the exception of CDU Library books	1 x 20 Page Book	

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Section A

Short Answer Questions

Total Marks for this section: 30 marks

Please note: Identify and discuss all the relevant issues and refer to cases and/or legislation (see case list provided) to justify or support your answers.

Question 1 [Total 15 marks]

Dilpreet runs her own interior decorating company (Dilpreet's Decorating Pty Ltd) as a sole director company. She expanded the business 12 months ago by borrowing \$200,000 from the Australian Industrial Bank Ltd ('AIB') to enable her to employ two assistant decorators and set up a new office in Cavanagh Street, Darwin.

Dilpreet very recently learned that one of the assistant decorators (Rakesh) has, without permission, taken (copied) from the office computer system a decoration catalogue previously written entirely by Dilpreet. The catalogue contains written descriptions and photographs of various styles of room and office decorations. Rakesh then used the catalogue to perform secret paid jobs for private clients on the side. Dilpreet dismissed Rakesh immediately, but he has threatened to challenge the dismissal as 'unfair'. Dilpreet has also now found that her operational costs and debts are higher than in-coming revenue. She partly blames the conduct of Rakesh for this state of potential insolvency. A number of creditors are now pressuring Dilpreet for immediate payment. Dilpreet is a single parent (with one daughter) and owns a house that is mortgaged to AIB (used to secure the \$200,000 loan). An amount of \$135,000 is still owing to AIB. In order to protect her assets and her daughter's future, Dilpreet has the idea that her house should be transferred into his daughter's name and wants to sign legal papers so that the house is held on trust for her until she reaches the age of twenty-five. She is now twelve.

- (a) Is Rakesh liable for breaching any intellectual property laws? Did Dilpreet breach employment law by immediately dismissing the assistant interior decorator? Explain your answers by referring to intellectual property law and employment law.

(10 marks)

- (b) What legal issues arise with regard to Dilpreet's plan to transfer the house to her daughter? Justify your legal opinion as whether she can do this by referring to the relevant legal principles and cases.

(5 marks)

Question 2 [Total 15 marks]

Jingru owns and operates a moderately popular Chinese restaurant. She has decided to add a new range of 'spicy sea-food hot pot' to her menu and has placed a large sign on the restaurant window promoting her new dishes as follows:

'The best sea-food hot pot in town, made entirely with fresh, local ingredients!'

Fan Bing Bing, the owner of another very popular Chinese restaurant across the street, is very annoyed about the sign as she has been serving sea-food hot pot for several years. She accuses Jingru of trying to steal her customers by misleading them - as she has found out that Jingru uses tinned tomatoes and frozen fish fillets imported from Vietnam. Perhaps not all the ingredients in her hot pots are so 'fresh'. Jingru's response is that even if the tomatoes are from a tin, they are fresh from the tin and the frozen fish fillets are 'snap-frozen' fresh and when she purchases them locally they are actually fresh. Fan has now threatened legal action under the ACL s. 18.

- (a) On what grounds could Fan bring an action against Jingru? What would be required to succeed, and what defence arguments could be used? Your answer must refer to the relevant sections of the Act and case law.

(10 arks)

- (b) Referring to the relevant sections of the ACL and case law, explain the differences between 'bait advertising' and 'deceptive conduct'.

(5 marks)

NB: Section B commences on the **next page**

Section B

Long Answer Questions

Total Marks for this section: 30 marks

Please note: Identify and discuss all the relevant issues and refer to cases and/or legislation (see case list provided) to justify or support your answers.

Question 3 [15 marks]

Asif drives a taxi for his uncle's taxi company. His shift starts at 12 midnight and it is common for him to receive radio calls giving instructions about where to collect passengers and where they are to be driven. One evening, Asif received such a radio message and was momentarily distracted as he was unfamiliar with the location and did not see a pedestrian who wandered onto the road in front of his taxi. He was not driving fast and it was a poorly lit street. The pedestrian was drunk. But Asif definitely ran over him. An ambulance was immediately called and the pedestrian suffered 3 broken ribs and a broken leg in addition to deep bruising on his body.

Explain whether the pedestrian can sue Asif's uncle on the basis of vicarious liability? On the above facts, can the defendant argue that there is 100% contributory negligence and if so on what grounds? What are the defendant's prospects of success? Your answers must draw on the relevant tort law cases.

(15 Marks)

NB: Question 4 is on the next page

Question 4 [15 marks]

Jamal was interested in purchasing a business class ticket for his flight from Darwin to Delhi over the wet season. As prices can vary between airlines he carefully shopped around on the internet first. The best deal he could find was from 'Air Garoupa' with a cheap fare that also promised 'benefits' in Singapore where he would face a minimum 4 hour wait between connecting flights.

The Air Garoupa salesperson quoted a price of around \$800 for the return flight if he purchased the ticket straight away. Jamal thought this was cheap and promptly gave his credit card details. Two weeks after he had paid for his return ticket he noticed he had been charged \$1,200 as there were some "unspecified taxes" added to his bill. He had not been directly informed about this by the salesperson when he paid, but when he made further enquiries with Air Garoupa he was told of an exclusion clause that is in all their ticket purchases and readily available on the internet which said: "prices may, from time to time, be subject to change due to unspecified taxes". In Singapore the unspecified 'benefits' turned out to be a free foot-massage in a quiet room next to the business lounge, but at the time he was there that service was overbooked and he could not use it.

Using the relevant case law, give specific reasons as to whether there is an enforceable contract here? Will Jamal be required to pay the extra \$400 and if so, on what grounds? (NB. You are not required to use Consumer Law in this question).

(15 marks)

-----**End of Exam**-----